

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1332 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARENDRA HOSEARY INDUSTRIES

Versus

MANOBHAI S PAREKH

Appearance:

None present for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/10/96

ORAL JUDGMENT

The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the parties. Perused the Special Civil Application.

2. The respondent filed a Summary Suit No.8 of 1984 in the Court of Civil Judge, Senior Division, Surat. It was the suit regarding trading transactions of Nylon

yarn. This suit has been filed by the respondent against the petitioners. The petitioners appeared and applied for leave to defend the suit which the trial Court has granted. The written statement has been filed by the petitioners to the suit aforesaid and they have made a counter claim to the tune of Rs.2,00,000/-. On the counter claim they paid Court fees also. The petitioners have come up with the case that the counter claim arose from the suit contract itself. The respondent gave an application ex.28 on 23rd October 1985 in the trial Court and prayed therein to struck of the counter claim of the petitioners from the written statement. This prayer has been made on the ground that the petitioners cannot put counter claim in the written statement as the suit is filed under summary proceedings. This application filed by the respondents has been allowed by the Court below under the order dated 5.2.86 and the counter claim was ordered to be struck of and excluded from the written statement. This order has been challenged by the petitioners before this Court by way of this Special Civil Application.

3. This writ petition is not maintainable before this Court in view of the two decisions of Supreme Court in the case of Swetambar Sthanakwasi Jain Samiti & Anr. v. The Alleged Committee of Management Sri R.J.I. College, Agra & Ors., reported in JT 1996(3) SC 21 and in the case of Durga Prasad v. Naveen Chandra & Ors., reported in JT 1996(3) SC 564. The Apex Court, in the aforesaid two cases held that the High Court should not permit extra ordinary jurisdiction to be converted into Civil Court under the ordinary law. When pending the miscellaneous suit, an order is passed by the trial Court, the same cannot be challenged by way of writ petition. Against the order impugned in this Special Civil Application, sufficient remedies are being provided under the provisions of Civil Procedure Code, 1908. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Ad-interim relief, granted by this Court stands vacated.

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(sunil)